

# Court of Appeals, State of Michigan

## ORDER

Darlene Thompson v Jenny's Farm Stand LLC

Docket No. 356882

LC No. 19-001188-NO

Douglas B. Shapiro  
Presiding Judge

David H. Sawyer

Mark T. Boonstra  
Judges

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The application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).



Presiding Judge

Shapiro, P.J., would deny leave to appeal at this interlocutory stage for the following reasons:

Defendant is a commercial enterprise that resells produce and other farm goods. It is not out in the country but within the city of Dexter, approximately ¼ mile from its downtown. Like any retail business, it seeks to attract customers. It elected to build a 20-foot-long slide on its commercial property. It charges no money for the use of the slide and a reasonable jury could readily conclude that the purpose of building the slide was to attract customers who would then purchase the goods on sale, thereby providing income to defendant. This case does not involve a large field, trails, hunting, trapping, fishing, camping, hiking, sightseeing, motorcycling, or snowmobiling. As to whether or not it involves "any other outdoor recreation use," MCL 324.73301(1), I do not see why using a slide on the premises of a store constitutes "outdoor recreation" simply because the slide was immediately outside, rather than inside, of the building; indeed, defendant sells products both inside and outside its building and so the area in question is really an extension of the store. This should be a straightforward case alleging defective commercial premises resulting in injury to an invitee.

Even assuming the recreational land use act is applicable and gross negligence must be shown for plaintiff to prevail, I fail to see how it would be unreasonable for a jury to conclude that it is grossly negligent to erect a 20-foot-long slide out of materials likely not intended for such a purpose and without even attempting to consult any safety rules, guidelines or standards for such a device. I fail to see how a panel of three judges are more able to make that determination than a jury and I do not agree that we should usurp the jury's role.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 16, 2021

Date



Chief Clerk